IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.24673 of 2007 &
M.P.No.1 of 2007

Prince Marketing
rep. by its Authorised Signatory
Mitesh Mehta
... Petitioner

vs.

1.The Commercial Tax Officer,
Vadapalani I Asessment circle
10-C, Razack Garden Main Road
M.M.D.A. Colony, Arumbakkam,
Chennai 600 106.

2.The Appellate Assistant Commissioner
(CT) III, I Floor, Kuralagam, Annexe
Chennai 600 108.
... Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, to call for the recordsj on the files of the 2nd respondent in M.P.No.103/2006 dated 28.3.2007 and quash the same, and direct the second respondent to entertain the appeal for passing of order afresh in accordance with law.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.R.Mahadevan,
Addl.Government Pleader

O R D E R

The prayer in the writ petition is to quash the order passed by the second respondent dated 28.3.2007 and for a direction to entertain the appeal.

2.The petitioner who is a dealer in PVC Pipes, tubes and fittings declared a total and taxable turnover of Rs.6,91,48,764/- and 6,66,06,326/- respectively in the monthly returns submitted in Form A-1 for the assessment year 2004-05. The first respondent passed an order of assessment on 12.6.2006, levied tax and penalty under Section12(3)(b) of the Tamil Nadu General Sales Tax Act 1959 without giving any prior notice. While doing so, the first respondent failed to take into account payment of Rs.5,26,859/- and therefore, the petitioner submitted a letter dated 4.7.2006 requesting

the first respondent to pass after deducting the said amount. The request of the first respondent was accepted, and a revised order of assessment was passed on 21.8.2006.

3.On receipt of the revised order, the petitioner preferred an appeal on 25.9.2006, under Section 31 of the Tamil Nadu General Sales Tax Act, 1959 before the Appellate Assistant Commissioner (CT) VI, Chennai, within a period of thirty days from the date of receipt of the revised order of assessment. But, the appeal petition was returned by the Appellate Assistant Commissioner VI, Chennai directing the petitioner to resubmit the appeal papers along with the 25% of the disputed amount as a pre condition.

4.As per the revised assessment order, the tax due on the disputed turnover is Rs.9,38,400/- and the penalty levied against the petitioner is 9,34,102/-. It is the case of the petitioner is that the petitioner represented the appeal memorandum along with the revised assessment order to the appellate authority namely the Appellate Assistant Commissioner (CT) III, Chennai, the second respondent herein along with the payment of Rs.3,11,365/- being the 25% of the disputed tax amount by way of an Demand Draft drawn in HDFC Bank dated 21.9.2006. However, the second respondent rejected the appeal on the ground that the payment of the pre-deposit of 25% of the disputed amount was made beyond the period of thirty days from the date of receipt of the copy of the revised assessment order dated 12.6.2006 and therefore the appeal is barred by limitation. As against the said order the petitioner has filed the present writ petition.

5.Considering the limited scope in the writ petition as to whether the appeal presented by the petitioner is barred by limitation or not, learned Additional Government Pleader was put on notice and heard.

6.The learned counsel for the petitioner submitted that the order dated 12.6.2006 has subsequently been modified as per the request made by the petitioner and as per the revised order dated 21.8.2006, the tax element and the penalty component was reduced to 9,34,096/- and Rs.9,34,102/- respectively. Learned counsel for the petitioner further submitted that as the order of assessment is now merged with the revised order, the proper course would be to challenge only the latter order dated 12.6.2006 and the limitation for filing the statutory appeal can be computed only from the date of receipt of the order dated 21.8.2006 and not from the original order dated 12.6.2006 as contended by the appellate authority.

7.The Commercial Tax Officer, Vadapalani Circle, the first respondent herein after adjusting a sum of Rs.5,26,859/- has passed a revised order on 21.8.2006 and reduced the tax as well as the penalty. Once the assessment is revised and a fresh order is issued, the earlier order dated 12.6.2006 is no longer in existence and computing the period of limitation for payment of pre deposit from that order is not correct. Under such circumstances, the reasoning of the appellate authority refusing to entertain the appeal on the grounds alleged i.e. barred by limitation is erroneous. As the appeal filed by the petitioner on 25.9.2006 is well within the statutory period provided under Section 31 of the TNGST Act, the same has to be entertained and decided on its merits.

8.Accordingly, a direction is issued to the second respondent, Appellate Assistant Commissioner (C.T.)III, Chennai to entertain the appeal preferred by the petitioner, if it is otherwise in order and pass appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

rpa
Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commercial Tax Officer,
Vadapalani I Asessment circle
10-C, Razack Garden Main Road
M.M.D.A. Colony, Arumbakkam,
Chennai 600 106.

2.The Appellate Assistant Commissioner
(CT) III, I Floor, Kuralagam, Annexe
Chennai 600 108.

+1 cc to Spl. Government Pleader Sr.No.45841.

+1 cc to Mr.R.Senniappan, Advocate Sr.No.45616.

MDR(CO)
dcp/30.7.07 W.P.No.24673 OF 2007